

§ 701.38

are not subject to the 60-day notice requirement of Article III, section 5(a) of the Federal Credit Union Bylaws.

[54 FR 18471, May 1, 1989]

§ 701.38 Borrowed funds from natural persons.

(a) Federal credit unions may borrow from a natural person, provided:

(1) The borrowing is evidenced by a signed promissory note which sets forth the terms and conditions regarding maturity, prepayment, interest rate, method of computation, and method of payment;

(2) The promissory note and any advertisement for such funds contains conspicuous language indicating that:

(i) The note represents money borrowed by the credit union;

(ii) The note does not represent shares and, therefore, is *not* insured by the National Credit Union Share Insurance Fund.

(b) Federal credit unions must comply with the maximum borrowing authority of § 741.2 of this chapter.

[45 FR 29271, May 2, 1980, as amended at 47 FR 17979, Apr. 27, 1982; 72 FR 30246, May 31, 2007]

§ 701.39 Statutory lien.

(a) *Definitions.* Within this section, each of the following terms has the meaning prescribed below:

(1) *Except as otherwise provided by law* or *except as otherwise provided by federal law* is a qualifying phrase referring to a federal and/or state law, as the case may be, which supersedes a requirement of this section. It is the responsibility of the credit union to ascertain whether such statutory or case law exists and is applicable;

(2) *Impress* means to attach to a member's account and is the act which makes the lien enforceable against that account;

(3) *Member* means any member who is primarily, secondarily or otherwise responsible for an outstanding financial obligation to the credit union, including without limitation an obligor, maker, co-maker, guarantor, co-signer, endorser, surety or accommodation party;

(4) *Notice* means written notice to a member disclosing, in plain language, that the credit union has the right to

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impress and enforce a statutory lien against the member's shares and dividends in the event of failure to satisfy a financial obligation, and may enforce the right without further notice to the member. Such notice must be given at the time, or at any time before, the member incurs the financial obligation;

(5) *Statutory lien* means the right granted by section 107(11) of the Federal Credit Union Act, 12 U.S.C. 1757(11), to a federal credit union to establish a right in or claim to a member's shares and dividends equal to the amount of that member's outstanding financial obligation to the credit union, as that amount varies from time to time.

(b) *Superior claim.* Except as otherwise provided by law, a statutory lien gives the federal credit union priority over other creditors when claims are asserted against a member's account(s).

(c) *Impressing a statutory lien.* Except as otherwise provided by federal law, a credit union can impress a statutory lien on a member's account(s)—

(1) *Account records.* By giving notice thereof in the member's account agreement(s) or other account opening documentation; or

(2) *Loan documents.* In the case of a loan, by giving notice thereof in a loan document signed or otherwise acknowledged by the member(s); or

(3) *By-Law or policy.* Through a duly adopted credit union by-law or policy of the board of directors, of which the member is given notice.

(d) *Enforcing a statutory lien—*(1) *Application of funds.* Except as otherwise provided by federal law, a federal credit union may enforce its statutory lien against a member's account(s) by debiting funds in the account and applying them to the extent of any of the member's outstanding financial obligations to the credit union.

(2) *Default required.* A federal credit union may enforce its statutory lien against a member's account(s) only when the member fails to satisfy an outstanding financial obligation due and payable to the credit union.

(3) *Neither judgment nor set-off required.* A federal credit union need not